Although the F.M.S. Civil Procedure Code makes no provision for a representation order, the Supreme Court has by virtue of Section 49 (i) (a) of the Courts Enactment, the same jurisdiction to make such an order as is now exercised in England by the Chancery Division of the Court of Justice.

The Judgment below is reported only in so far as it deals with the question of the jurisdiction of the Supreme Court of the Federated Malay States to make representation Orders.

ORIGINATING SUMMONS.

E. D. Shearn for the Plaintiffs.

A. J. Bostock-Hill for defendants Nos. 1, 3 and 4.

R. Madge for Defendant No. 5.

Terrell, J.A.—This was a Summons praying for constructions of the Will of the abovenamed deceased, and certain other relief. The parties before the Court were the Plaintiffs, who are three of the sons of the testator, and the executors under his Will,—and five defendants, all beneficiaries. The four original defendants were Lam Taip Nyong, the principal wife, Yong Kin Lin, another son of the testator, Lim Keow a secondary wife, and Yong Soong Moi a daughter. Subsequently by Order of Court dated the 12th December, 1938, Yong Pang Seok, an infant adopted grandson of the testator mentioned in clause 15 (d) of the Will, was added as a defendant. He appeared by the Registrar as his guardian *ad litem*. The second defendant did not appear. The Plaintiffs were represented by Messrs. Shearn and Charlesworth, the 1st, 3rd and 4th defendants by Mr. Bostock Hill and the 5th defendant by Mr. Madge.

Although a member of each class of persons interested as beneficiaries was before the Court, it appeared desirable that the other members of each class should also be bound by any order made, and accordingly the Plaintiffs applied by summons for the following representation orders, namely that

(1) the plaintiffs be appointed to represent the sons of the deceased

(2) the defendant fourthly above named be appointed to represent the daughters of the deceased

(3) the defendant thirdly above named be appointed to represent the secondary wives of the deceased

(4) the defendant fifthly above named be appointed to represent the deceased's adopted sons and his grandsons adopted or to be adopted to his deceased son Yong Ken Lin.

Unfortunately the Civil Procedure Code makes no provision for a representation order. I took the view, however, that the power to make an order of Court binding upon parties not actually before it, but represented at the hearing by parties in the same interest, is a matter of jurisdiction rather than of procedure, and that as under section 49 (i) (a) of the Courts Enactment the original civil jurisdiction of the Supreme Court shall consist of the same jurisdiction and authority within the F.M.S. as is now exercised in England by the Chancery and King's Bench Divisions of the High Court of Justice, this conferred upon the Court the power to make representation orders which is certainly vested in the Chancery Division of the High Court in England. Accordingly I made the order as prayed.

(His Lordship then proceeded to deal with other questions raised by the Originating Summons).

Order as prayed.

[ORIGINAL CIVIL JURISDICTION]

ROGER HALL, C.J.

March 22, 1938.

IN THE MATTER OF SECTION 46 OF THE ADVOCATES AND SOLICITORS ENACTMENT No. 22/1914 and IN THE MATTER OF A BILL OF COSTS DELIVERED BY MR. S. M. SHARMA AN ADVOCATE AND SOLICITOR.

(SELANGOR CIVIL APPLICATION No. 1 of 1938)

Advocates and Solicitors Enactment (Cap. 15) section 47—Costs of obtaining an Order for taxation of Costs.

The costs fixed under section 47 of the Advocates and Solicitors Enactment (Cap. 15) are intended to cover only ex parte applications and not to applications which are opposed and heard by a Judge.

CIVIL APPLICATION.

Roger Hall, C. J. The Registrar has sought a direction of the Court on the true interpretation of section 47 of the Advocates & Solicitors Enactment (Cap. 15). The relevant part of that section reads:—

> "The costs of obtaining an order for taxation of costs, including petition of course, order and service of order but not including any Court fees payable thereon.....shall be the sum of five dollars".

In the matter under review, the petition was opposed, but an order was made by, Cussen J., that the bill of costs be taxed, and also the costs of the enquiry.

In the view of the Registrar inasmuch as there are no words of qualification to the opening words of the section, 'The costs of obtaining', therefore, no matter how much the application may be opposed or how long the enquiry may take, yet the total amount recoverable is only five dollars. Mr. Sharma, on the other hand, argued that a petition of course is an *ex parte* application and the applicant is entitled to an order as of course and, being *ex parte* and of course, therefore the fee is fixed at five dollars.

I agree with Mr. Sharma that the section must be intended to cover only *ex parte* applications which are dealt with as such and not matters in which, as here, opposition was made and heard by the Judge. To read the section otherwise would, in my view, create a hardship, and I see no necessity to put a narrow construction upon it.

I, therefore, held that the taxation should continue.

As regards item 8 which was referred to me, if my ruling on the previous point was adverse to the Registrar's opinion, I have not heard Mr. Sharma yet; but subject to anything he may have to say I may say I agree with the ruling of Aitken J. in Perak Civil Suit No. 39 of 1937.

As regards item 8, Mr. Sharma says, as the whole question is now purely academic, he does not wish to argue the point.

[ORIGINAL CIVIL JURISDICTION]

AITKEN, J.

LOOI GUAN KWAY

against

LOW LEAN BOK AND OTHERS

(PERAK CIVIL SUIT No. 39 of 1937)

1932 Rule 4 Sub-rules 49 and 52—Item 86 in Schedule—Fee for instructions in an application in Chambers adjourned into open Court.

No fee "for considering authorities and getting up the case" under item 86 in the Schedule to 1932 Rule 4 is chargeable in the case of an application in Chambers even though adjourned into Court for argument, but an addition to the fees the costs of the existing scale may be allowed in exceptional cases.

Scope of sub-rules *49 and 52 considered.*

M. E. A. Farr for Plaintiff.

S. Seenivasagam for First & Fifth Defendants.

Kit Seng Khong for Second Defendant.

H. Huntsman for Fourth Defendant.

Aitken, J.—The Plaintiff instituted this suit by a plaint which was filed on the 13th of April 1937. On the 15th of November in the same year, after judgment in default against one Defendant had been set aside and a similar judgment against another Defendant had been refused, the Plaintiff took out a Summons in Chambers for leave to make very substantial amendments and additions to his plaint.

This Summons in Chambers was adjourned into Court on the 25th of November, 1937, and argued before me in open Court on the same day. The arguments were lengthy and properly so, and occupied the time of the Court for the whole day. My decision was reserved until the 29th of that month, when I read a written ruling dismissing the application with costs.* At the hearing thereof Mr. Seenivasagam appeared for the 1st and 5th Defendants, Mr. Kit Seng Khong for the 2nd Defendant, & Mr. Huntsman for the 4th Defendant; the Plaintiff was represented by Mr. Briggs and Mr. Farr.

The fate of the Plaintiff's application is still uncertain, as an appeal has been lodged against my refusal of leave to amend; but the Defendants' Solicitors brought in their bills of costs for taxation between party and party before the Assistant Registrar on the 15th of December 1937, and Mr. Farr attended that taxation on behalf of the Plaintiff. Each bill of costs contained an item of $750 for "considering authorities and getting up the case". Mr. Farr objected to these items on the ground that no fee is chargeable "for considering authorities and getting up the case" in respect of an application in chambers, even though adjourned into Court; and the Assistant Registrar has referred this item in each of these Bills of Costs to me for my directions thereon under sub-rule 59 of Rule 4 of 1932.

Sub-rule 59 of Rule No. 4 of 1932 provides as follows:—

> "In all cases for which a fee or costs are not provided in this rule, or where from any exceptional feature the fees or costs allowed are not in judgment of the Registrar sufficient, he may allow such fees or costs, or make such additions to the fees or costs of the existing scale, as the Judge on a reference to him directs."

It will thus be seen that I have to decide, first of all, whether a fee "for considering authorities and getting up the case" is provided for an application in chambers, which is adjourned into Court, by Rule 4 of 1932. If the answer to that question is in the

*Reported in (1938) 7 M.L.J. p. 35.